



# Johns Creek

*be the exception*

## **VENDOR MANUAL**

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## PURCHASING DIVISION MISSION STATEMENT:

**Our mission is to obtain needed goods and services by the most efficient and effective method while maintaining the highest level of integrity and utilizing sound fiduciary responsibility which maximizes the value of tax dollars spent by the City.**

### I. GENERAL INFORMATION

#### A. INTRODUCTION

The purpose of the City of Johns Creek Vendor's Manual is to assist prospective vendors with the City of Johns Creek Purchasing Policies and Procedures and to instruct them on the proper procedures for doing business with the City of Johns Creek. This manual is intended to be a representation of information and procedures which prospective vendors can utilize when doing business with the City. If specific questions arise that are not answered in this material, vendors can address questions to:

The City of Johns Creek Purchasing Division 12000 Findley Rd., Johns Creek, Ga. 30097  
Phone: (678) 512-3233 Fax: (678) 512-3244 Website: [www.johnscreekgov.gov](http://www.johnscreekgov.gov). The City of Johns Creek Purchasing Division of the Finance Department is the central procurement office for all City departments. The policy of the City of Johns Creek is to provide for the fair and equitable treatment of all persons involved in public purchasing with the City of Johns Creek, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity. The Purchasing Division's purpose is to ensure that all prospective vendors and City departments adhere to the City of Johns Creek Purchasing Policy. These procedures are designed to ensure that all city funds are expended in accordance with sound business practice, recorded in compliance with acceptable accounting procedures, and meet the requirements of federal and state agencies that could assist in financing activities of the City of Johns Creek.

#### B. INSPECTION OF RECORDS

In accordance with the State of Georgia Open Records Act, O.C.G.A. Section 50-18-72, copies of open records may be obtained by submitting a written request along with payment of the applicable service charge fee. The service charge fee is 25 cents per copied page plus cost of staff's research time preparation of documents after the first fifteen minutes. Once a bid or informal procurement is opened, it is considered to be open for review by the general public. If a vendor or other interested party would like to view a bid, an appointment should be made with the City Clerk for an appropriate time to review the document. The City Clerk will advise the Purchasing Division of the document to be reviewed. The Purchasing Division has three (3) working days to respond to the requesting party with the length of time that will be necessary in order to provide the information, if the information is available. Information regarding proposals will not be available for inspection by the public until an award of the contract has been made.

### C. PURCHASING/VENDOR RELATIONSHIPS

Meetings: Vendors are welcome to meet with Purchasing staff members for legitimate reasons. Vendors should schedule an appointment in advance to ensure that the appropriate staff would be available. During the busiest times of the year, it may be difficult for the Purchasing staff to schedule a meeting with vendors. The length for the meeting may need to be limited. Information such as catalogs, line cards, and new product information is always helpful and welcome.

## II. VENDOR REGISTRATION

### A. APPLICATION & REGISTRATION

Vendors interested in participating in the bidding process should request to be added to the City of Johns Creek bidders list. Vendors should submit this request by completing a Vendor's Application, available from the Purchasing Division or on the City of Johns Creek website at [www.johnscreekga.gov](http://www.johnscreekga.gov).

Vendors will need to list the NIGP commodity codes in relation to the various materials, specifications, equipment, supplies, and services which they can provide. The requesting vendor will be placed on the bidders list for those commodities which are listed on the Vendor's Application. The City will select vendors from this list when a bid opportunity becomes available.

Vendors must maintain an acceptable status of providing goods and services in a responsible manner in order to remain on the City's bidders list.

### B. REGISTRATION REVISIONS

Vendors are responsible for notifying the City of any changes that need to be made on their registration information. Changes, such as company name, address, phone number, commodities, etc. will need to be submitted in writing on company letterhead and should bear the signature of an officer authorized to bind the company.

### C. MINORITY, WOMEN-OWNED, and SMALL BUSINESS ENTERPRISE

#### 1. Purpose

It is the policy of the City of Johns Creek to take steps to ensure the participation of qualified Minority, Women-owned and Small Business Enterprises (M/W/SBEs) in State and Federally-funded procurement activities. The City of Johns Creek, under the guidance of the City Manager or designee, will work to ensure that these businesses are included in all solicitations for goods and services whenever feasible and consistent with the City's Purchasing Ordinance.

#### 2. Definitions

The words and phrases defined in this policy shall have the meanings ascribed when used, unless the context clearly indicates another meaning. Other standard definitions that apply to City purchasing activities can be found in the City Ordinance. The definitions below are those that specifically pertain to the City's M/W/SBE policy.

#### A. Atlanta Metropolitan Region:

The Atlanta-Sandy Springs-Marietta, GA Metropolitan Statistical Area (MSA) as defined by the U.S. Bureau of the Census which includes the following counties: Barrow, Bartow, Butts, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb,

Douglas, Fayette, Forsyth, Fulton, Gwinnett, Haralson, Heard, Henry, Jasper, Lamar, Meriwether, Newton, Paulding, Pickens, Pike, Rockdale, Spalding and Walton.

B. Certification:

The process by which the City Manager or his designee shall determine the eligibility of an established business enterprise to participate in the City of Johns Creek's M/W/SBE Program as defined in this section.

C. Commercially useful function:

A distinct element of the work such as performing, managing and supervising the work involved. However, a business enterprise that serves as a conduit for another business shall not be deemed to perform a commercially useful function.

D. Control:

The primary power to direct the management and operations of a business enterprise.

E. Contractor good-faith efforts:

- a. Attendance at pre-bid conferences, if mandatory;
- b. Contacting certified M/W/SBEs that perform or supply the type of work to be subcontracted or materials provided;
- c. Segmenting work or creating delivery schedules to encourage M/W/SBEs to participate in the contract when feasible;
- d. Providing written notice of subcontracting opportunities for M/W/SBEs to minority, women and small business professional associations as provided by the City, the U.S. Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce;
- e. Advertising in local news media focused on minority persons, women and small businesses as identified by the City;
- f. Contacting certified M/W/SBEs who have specifically requested information on the specific bidding opportunity and the contract being awarded;
- g. Negotiating with M/W/SBEs on work to be subcontracted, including:
  - i. Reporting the names, addresses and telephone numbers of M/W/SBEs who were contacted;
  - ii. The date negotiations took place; and
  - iii. A description of the information provided to M/W/SBEs regarding the plans, specifications and requirements for portions of the work to be performed.
- h. Assisting M/W/SBEs contacted who needed support in obtaining bonding, insurance, financing or in reviewing the plans, specifications and requirements of the bid. The City reserves the right to request evidence of compliance from the contractor and will require the contractor to submit the Certification of Good-Faith Efforts documenting compliance.

F. Joint venture:

- a. Two or more persons or corporations who combine their labor, resources and expertise for a single undertaking. The profits and losses are shared equally or according to a contract. There is a common purpose and each “partner” shall have equal right to and control of the operation or activity in the venture without an agreement to the contrary; or
- b. A combination of contractors performing a specific job in which the business enterprises participate and share a percentage of the net profit and loss; or
- c. A joint business association combining property, money, effort and skills and/or knowledge in the fulfillment of a contract.

G. Minority Business Enterprise or MBE:

- a. A sole proprietorship in which the owner is a minority person who owns, controls and manages the business; or
- b. A corporation in which at least 51% of the stock or the assets of such a corporation is owned, controlled and managed by one or more minority persons; or
- c. A partnership in which at least 51% of the assets of such partnership is owned, controlled and managed by one or more minority persons; or
- d. A joint venture in which at least 51% of the interests of such joint venture is owned, controlled and managed by one or more minority persons; or
- e. Any other business or professional entity in which at least 51% of the assets in such business or professional entity is owned, controlled and managed by one or more minority persons; or
- f. Any entity in which at least 51% of the assets of such entity is owned, controlled and managed by one or more minority persons or one or more women and such minority person; or a business which has been determined by the City to be currently certified by another local government’s M/W/SBE program.
- g. No minority business owned or controlled by a minority shall be considered an MBE for the purposes of this program if the ownership was brought about by the transfer of ownership to the minority, other than by descent, within three years following the sale or transfer of ownership.

H. Minority person:

- a. A citizen or legal resident alien of the United States who is:
  - i. African-American: a person having origins in any of the black racial groups in Africa as well as those identified as Jamaican, Trinidadian or West Indian.
  - ii. Spanish/Hispanic: a person who is Mexican, Puerto Rican, Cuban, Central or South American in origin or descent regardless of race.
  - iii. Asian American: a person having origins in the Far East, Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan or the Indian Subcontinent.  
Native American: a person having origins in any of the original peoples of North America, American Indian, Eskimo, Aleut or Native Hawaiian.
  - iv. Origin or descent can be regarded as the ancestry, nationality group, lineage or country in which the person or persons' parents or ancestors were born before their arrival in the United States.

I. M/W/SBE

A certified M/W/SBE who has an executed contractual agreement with a contractor for:

- a. The production of goods from raw materials; or
- b. The substantial alteration or fabrication of raw materials before resale; or
- c. The delivery of materials and supplies as a condition of the contract.

J. Segmentation:

The act of dividing total requirements for a contract, when economically feasible, into smaller tasks or quantities, or establishing delivery schedules, where requirements permit, to encourage participation by M/W/SBEs in the contracting opportunity.

K. Small business enterprise:

A business concern defined as small under the U.S. Department of Commerce's Small Business Administration (SBA) guidelines published at 13 CFR Chapter 1 121.101 and 121.201. North American Industry Classification System (NAICS) industry codes are used and expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. NAICS industry titles and corresponding size/dollar standards are included in the attachments to this policy. To qualify as a small business under this policy, the small business concern must meet these SBA size standards.

L. Subcontractor:

Any person or business enterprise providing goods, labor or services to a contractor if such goods, labor or services are procured in fulfillment of the contractor's obligations

arising from a contract with the City. Subcontractor includes every level of subcontracting required to fulfill a contract with the City.

M. Woman:

A person of the female gender who is a citizen or legal resident alien of the United States.

N. Women-owned Business Enterprise or WBE:

- a. A sole proprietorship in which the owner is a woman who owns, controls and manages the business; or
- b. A corporation in which at least 51% of the stock or assets of such corporation is owned, controlled and managed by one or more women; or
- c. A partnership in which at least 51% of the assets of such partnership is owned, controlled and managed by one or more women; or
- d. A joint venture in which at least 51% of the interests in such a joint venture is owned, controlled and managed by one or more women; or
- e. Any other business or professional entity in which at least 51% of the assets in such business or professional entity is owned, controlled and managed by one or more women; or
- f. Any entity in which at least 51% of the assets of such entity is owned, controlled and managed by one or more minority persons and one or more women; or
- g. A business which has been certified as a WBE by the Purchasing Manager that the business is currently certified by another local government's M/W/SBE program as a WBE.
- h. No woman business enterprise owned or controlled by a woman shall be considered a WBE for the purposes of this program if the ownership was brought about by the transfer of ownership to the woman, other than by descent, within three years following the sale or transfer of ownership.

O. Owned, controlled and managed:

1. The requisite interests in or assets of a business applying for minority or women-owned business enterprise certification and possessing equivalent incidents of such ownership, including an equivalent interest in profit and loss, and contribution of an equivalent percentage of capital, equipment and/or expertise to the business.
2. Ownership shall be measured as though not subject to the community property interest of a spouse, if both spouses certify in writing that the nonparticipating spouse relinquishes control over his or her community property interest in the subject businesses (but by doing so is not required to transfer to his or her spouse his or her community property ownership interest or to characterize the property as the separate property of the spouse).
3. The minority person(s) or woman owner(s) shall be recognized as having ultimate control over day-to-day business decisions affecting the M/W/SBE and shall hold title commensurate with such control. Such ultimate control shall be known to and at least tacitly acknowledged in day-to-day operations by employees of the business.

### III. PROCUREMENT AND AWARD METHODS

#### A. THE BASIC METHODS OF PURCHASING

**Formal Sealed Bids**-This method is used where the cost of commodities and services is \$100,000 or greater, where there are clear and defined specifications available and where cost is the primary basis of award. Bids are advertised for a minimum of fourteen (14) days in the City's legal organ (JC Herald). Bids will also be posted on the City's website ([www.johnscreekga.gov](http://www.johnscreekga.gov)) and the State of Georgia Department of Administrative Services (DOAS) Georgia Procurement Registry (GPR) ([www.doas.state.ga.us](http://www.doas.state.ga.us)) and the bid awarded to the lowest responsive, responsible bidder meeting the minimum specifications. All contracts of \$100,000 or more shall be in writing and shall be approved by the City Council. The City Council reserves the right to reject any and all bids.

**Formal Sealed Request for Proposal**-This method is used for the purchase of all goods and services where the competitive sealed bid method is neither practical nor advantageous. Generally, competitive sealed request for proposals (RFP) are used for procurements such as professional services, service contracts, highly technical equipment, etc. Competitive sealed RFP's are advertised in the City legal organ for fourteen (14) days. RFP's will also be posted on the City's website ([www.johnscreekga.gov](http://www.johnscreekga.gov)) and the State of Georgia Department of Administrative Services (DOAS) Georgia Procurement Registry (GPR) ([www.doas.state.ga.us](http://www.doas.state.ga.us)). Proposals are evaluated against specific criteria by an Evaluation Committee as specified in the solicitation.

**Informal Procurements**-This method is used for the purchase of goods and services between \$5,001 and \$100,000. Unlike the Formal Sealed Bids and Request for Proposals, formal advertising is not required. Three (3) written quotes are obtained (either fax, email/mail) and the bid is awarded to the lowest responsive, responsible bidder meeting the minimum specifications. Informal procurement opportunities may be announced on the City's website and/or the State of Georgia/DOAS GPR at the Purchasing Manager's discretion.

**Small Purchases** - Purchases between \$501 and \$5,000. Bids are solicited informally and do not require formal advertising. Written documentation is obtained from the vendor through telephone, mail, fax, e-mail or by hand delivery to the Purchasing Division. Example: vendor name/address, description, quantity, unit of measure, delivery schedule, unit cost, and extended total cost. User Departments or the Purchasing Division may purchase up to \$5,000 with three (3) quotes and may use the City procurement card (Visa.)

#### B. CONTRACT AWARD

When an award of a bid or proposal is made, a purchase order is issued, a contract is prepared, and/or a price agreement is established. A bid tabulation reflecting the bid results is available upon request.

When contracts are issued for projects or services, the vendor returns the signed contract along with any required insurance and bonding documents. Purchasing will send a copy of the executed contract and a Notice to Proceed to the successful vendor. All the vendors who submitted a bid/proposal will be notified by email/mail the status of the award.

Purchase orders, prior to being issued, must have funds approved and the dollar amount encumbered in the requesting department's budget. The Purchasing Division will not issue a purchase order before funds have been encumbered and the budget line item has been verified. No department of the City of Johns Creek can authorize items or services to be delivered or performed prior to the vendor's receipt of a purchase order. Any purchases made contrary to this method are considered unauthorized and the City of Johns Creek may choose not to authorize payment.

### C. PAYMENT TERMS

The standard payment terms for payment of invoice are: Net30 days. The City will make payments to the Successful Vendor based on a preferred payment method, for example: lump sum at completion of contract term; or % payments tied to deliverables as specified; or progress payments tied to event completion per schedule; or monthly payments taking total bid and dividing by months in contract from month of contract performance start to end of project as described in the solicitation document. Upon submittal of invoice for payment, the vendor is to reference the Purchase Order number and Project number on the invoice.

## IV. SOLICITATION PROCESS

### A. NOTIFICATION

Bids, informal procurements, and proposals may be e-mailed/mailed to vendors suggested by the User Departments. Registered vendors with the City that have the specific NIGP code will be notified by e-mail/mail of any quotes, informal bids and/or proposals. However, the City of Johns Creek cannot guarantee that every vendor contained on any vendor's list will receive a copy of every bid or proposal that is sent out for a particular commodity. Vendors are encouraged to review the various methods of advertisements that the City uses in the bid process. In order to ensure that vendors will be properly notified, it is the vendor's responsibility to register as a vendor with the City and to contact the Purchasing Division with any changes to the company's information. It is also recommended that you register as a vendor with the State of Georgia Department of Administrative Services (DOAS) Georgia Procurement Registry (GPR) at ([www.doas.state.ga.us](http://www.doas.state.ga.us) .)

### B. SOLICITATION DOCUMENTS

Quotes, bids, and RFP's are notices used by the City to solicit offers to buy goods or services and should not be construed as an order by the City to make any purchase. Vendors should review instructions of the solicitation document and include all information and signatures as required. The quote, bid, or proposal must be returned to the Purchasing Division on or before the time and date indicated for the bid opening. Any responses received after the indicated date/time of the bid opening are considered late and will not be considered. The use of a company bid form containing terms and conditions which are in conflict with those of the solicitation document constitutes a counteroffer and are not acceptable.

### C. PRE-BID AND PRE-PROPOSAL CONFERENCES

The nature of some bids and proposals require a pre-bid or pre-proposal conference. Pre-bid and pre-proposal conferences are held in order to clarify specifications, answer vendor's questions regarding the specific bid, informal procurement, or proposal, or to allow the vendor to perform an on-site review and inspection. Any changes or clarifications to the original bid or proposal as a result of a pre-bid or pre-proposal conference will be made in writing in the form of an addendum, and may be e-mailed or faxed to all vendors who originally received or have requested the solicitation. Addendum information will be posted on the City's website and the State of Georgia/DOAS Bid Registry. All questions and information requests shall be made directly to the Purchasing Division Buyer of Record to ensure that all vendors have the same information.

The City of Johns Creek strongly encourages all interested vendors to attend the pre-bid or pre-proposal conference on any bid, proposal or solicitation that the vendor has an interest. Valuable information is exchanged at these conferences; therefore, it is in the best interest of the vendor to participate.

#### D. SOLICITATION SUBMITTAL

1. Follow the instructions set forth in the procurement documents.
2. Any questions regarding the procurement opportunity must be directed to the appropriate party named in the document, by the appointed date stated in the letter.
3. In order to submit a quote, bid or proposal the bidder/offeror must be able to responsibly meet the requirements set forth in the bid/proposal.
4. When applicable, returning the “Receipt of Bid” acknowledgement informs the buyer of your intent to participate in the bid opportunity and desire to be sent addenda.
5. Each bidder shall certify in writing that such bidder has not engaged in any collusive or anti-competitive practices in responding to a solicitation for bids or proposals. A declaration of non-collusion is simply a statement made by the vendor which states the bid submitted is a bona fide bid which has been prepared independent of other bidders, and is in all respects fair and without collusion or fraud (i.e. price fixing, bid rigging, and rotation of award.)
6. All quotes or proposals must be submitted in a sealed opaque envelope or package clearly marked with the bid or proposal number and description, the date and time of the public opening, and company name in the upper left-hand corner. The envelope must be addressed to the location specified in the bid document. Refer to all instructions in the bid document for clarification and requirements in submitting a particular bid. Documents must be submitted via hand-delivery, U.S. Mail, or other type of delivery service. The City of Johns Creek currently does not accept sealed bids or proposals through a fax or e-mail.

#### E. HOW BIDS AND PROPOSALS ARE OPENED

Formal sealed bids and proposals shall be opened publicly in the presence of one or more witnesses on the date and at the time and place specified in the bid/proposal documents. Vendors and interested parties are invited to attend the public opening.

During the opening of formal sealed bids, the following information shall be read aloud: the name of each vendor submitting a sealed bid, total pricing and delivery information. At this time, all sealed bids are considered to be open record.

During the opening of proposals, only the name of each proposer shall be announced. No other information will be disclosed. The proposal is not considered open record until a contract is awarded.

Once the formal sealed bid or proposal is opened, copies of the documents are forwarded to the User Department(s). Basis for award of a bid is evaluated and determined upon the lowest responsible, responsive bidder meeting the minimum standard of specifications.

For proposals, an evaluation team is formulated to review and rank the proposers. By City Ordinance, as a minimum, the evaluation team shall consist of the Purchasing Manager, the Department Head, and a designee within the user department. The basis for award of a contract shall be to the contractor which is deemed to be in the best interest to the City.

#### F. ADDENDA

The City may revise a solicitation document by issuing an addendum prior to its opening. Acknowledgment of receipt of an addendum should be returned prior to the time set for receipt of bids/proposals, or accompany them. Failure to bid or propose in accordance with an addendum may be cause for rejection. In unusual circumstances, the City may postpone an opening in order to notify vendors to give them sufficient time to respond to the addendum. The City may withdraw or cancel a solicitation document at any time. A notice of cancellation will be issued. If the solicitation document is cancelled the City will not reimburse any vendor for the preparation of their proposals. Quotes or proposals may be returned upon request if unopened.

#### G. LATE CHARGES

Bids/proposals containing provisions for late charges, whether designated as interest charges or otherwise, will not be considered for an award. Vendors are instructed to remove, strike through, or otherwise withdraw any such provision contained in a vendor's printed forms. The bidder/offeror must initial such changes prior to submitting a bid or proposal to the City.

#### H. SPECIFICATIONS

Detailed specifications may not always accompany a solicitation document. In some instances, reference will be made to certain standard specifications. Such a reference incorporates any such standard specification in the solicitation document and any response must then be in accordance with those specifications. In other cases, references may be made to one or more brand names. Such reference is not restrictive unless otherwise specified and is used for descriptive purposes only. Unless the bidder/offeror clearly indicates in the quote or proposal that he or she is offering equivalent products, such bids or proposals will be considered as offering the brand name products referenced in the solicitation document. Quotes or proposals on equivalent products of like quality and performance will be considered provided that the product is clearly equivalent. The bidder/offeror shall submit catalog excerpts, specifications, or other materials suitable for use in the evaluation of the product offered. Any such materials shall become official records of the City. The Purchasing Division will, in its sole discretion, determine whether a substitute offer is equivalent to the product or products specified and may require the bidder/offeror to supply additional descriptive material, samples, or other proof if needed.

## I. REVISION OR WITHDRAWAL OF A BID/PROPOSAL

Modification/Correction of Bids/RFP: If an error is discovered prior to the opening, the vendor can submit a corrected sealed Bid/RFP or may opt to withdraw the bid prior to the bid opening. The corrected document must be clearly marked that it supersedes the Bid/RFP originally submitted. If an obvious clerical error is discovered after the formal document has been opened, the vendor may submit a letter to Purchasing requesting that the error be corrected. Final determination as to whether an error is a clerical one rests with the Purchasing Manager. Generally, modifications to opened bids or proposals for reasons other than obvious clerical errors are not permitted.

## J. LATE BIDS

Formal sealed bids or proposals received after the date and time stated in the solicitation document will be date and time stamped, labeled as "LATE" and will not be further considered.

## K. BID, PERFORMANCE, AND PAYMENT BONDS

Bid, payment, and performance bonds are required by law (See O.C.G.A. 36-91-2) for construction (public works) contracts in excess of \$100,000. The bid bond must accompany the bid/proposal. Any bid or proposal submitted without the required bid bond will not be considered for award. All bid bonds must be in a sum equal to five (5%) percent of the total amount of the bid/proposal, unless otherwise specified.

Payment and performance bonds are required by the City's Purchasing Ordinance (Chapter 2, Article 7, Section 9) for all construction (public works) contracts in excess of \$100,000. Performance bonds may also be required for construction contracts below \$100,000 and for any non-construction contracts at the discretion of the City. All payment and performance bonds must be in an amount at least equal to 100% of the total contract price unless otherwise specified. Bond requirements must be identified in the solicitation document.

The insurance and bonding company must be licensed to do business by the Georgia Secretary of State, authorized to do business in Georgia by the Georgia Commissioner of Insurance Department, listed in the Department of Treasury's Publication of Companies holding Certificates of Authority as Acceptable Surety on Federal Bonds and as acceptable reinsuring companies, and must have an A.M. Best rating of A-VI (A-6) or higher. Vendors shall, at their own expense, make arrangements for the issuance of any bond called for in the solicitation document or otherwise required by law.

## L. MANUFACTURER'S CERTIFICATE

The Purchasing Division reserves the right to request that the vendor furnish proof that it is the manufacturer or one of the manufacturer's authorized dealers or distributors of the product proposed and is capable of providing warranty services on any items delivered. When a manufacturer's certificate or evidence of authorized distributorship is required, it

shall be dated not more than thirty (30) days prior to the date of opening of the bid/proposal.

## V. EVALUATION OF BIDS/PROPOSALS AND AWARD

### A. REJECTION OF BIDS/PROPOSALS

The City of Johns Creek reserves the right to reject any and all bids/proposals submitted in response to any solicitation document, to reject any portion thereof, or to waive any minor irregularity or administrative requirement.

### B. SPLIT AND MULTIPLE AWARDS

Where more than one item is requested in a bid, the Purchasing Division reserves the right to determine the lowest responsible bidder either on an overall basis, or on the basis of individual items or groups of items. Ordinarily, split awards will not be made unless the savings to the City is substantial. In some circumstances, when it is deemed to be in the City's best interest, the Purchasing Division may make multiple awards. They are only made when it is not possible or practical to make a competitive low bid award to a single bidder.

### C. BIDDER RESPONSIVENESS

An apparent low bidder/offeror may not be recommended for award of a bid or contract if they are found to be non-responsive. A bid tabulation shall be prepared by the Purchasing Manager/Buyer of Record documenting all bids and the responses of all bidders. A bid response may be deemed as non-responsive if:

1. Failure to use the City bid schedule;
2. Failure to return applicable compliance/specification sheets;
3. Failure to return applicable addenda;
4. Failure to provide information on alternates or equivalents when required/allowed;
5. Failure to provide bid bond when specifically stated will result in automatic rejection;
6. Failure of bidder to sign all requested bid documents;
7. Failure to submit bid by deadline will result in automatic rejection;
8. Failure of vendor to extend prices;
9. Failure to hold firm pricing;
10. Failure to obligate to specified delivery requirements;
11. Submission of a bid or offer in such a manner which would prevent the establishment or determination of a firm bid price. Such qualifications would include refusing to hold firm prices or submitting bid prices subject to change due to manufacturer increases/decreases or market conditions, or minimum order quantities;
12. Submission of a bid which is contingent upon receiving the award of another bid;
13. Failure to provide a bid surety or meet insurance requirements (when specifically required in the bid); or
14. Submission of unacceptable exceptions to specifications and/or contract clauses.

#### D. BIDDER RESPONSIBLENESS

Bids may be disqualified by the Purchasing Manager as a result of, but not necessarily limited to, the following reasons for irresponsibility:

1. Previous vendor performance problems for the City of Johns Creek or surrounding municipalities as documented in a vendor performance file, maintained by the Purchasing Division;
2. Failure to meet contractual obligations after the award has been made; or
3. Bidder's references provide reports of poor contract performance on similar projects.

#### E. RESOLVING TIE BIDS

A tie bid exists when two or more bidders offer, at identical prices, products that meet all specifications, terms, and conditions. Bids received from two or more vendors which are identical and meet the requirement of the bid specifications shall, in most instances, be awarded on the following basis:

1. The bid submitted by a vendor who does not have a documented negative vendor performance record contained in the Vendor Performance File.
2. The bid submitted by a vendor located within the City who has a current Occupation Tax Certificate issued by the City of Johns Creek.
3. If the tie bids all meet the above criteria the bid award is based on the toss of a coin by Purchasing Staff in a public session. The bidders involved will be invited to attend the coin toss at a stated date and time. One or more witnesses from the Purchasing Division and the User Department(s) may be present. A single coin toss (called by the company listed first in the alphabet) will break the tie and decide the award.

#### F. FREIGHT CHARGES

All offers received will be F.O.B. Destination. Title shall remain with shipper until items have been received and inspected. Bidders/offerors may, however, charge back freight and insurance. In such event, the bidder/offeror shall state the exact amount of freight or insurance charges or a "shall not exceed" amount as a single line item.

#### G. RE-SOLICITATION

If at any time it is found that the integrity of the process has been compromised or that errors have occurred, the solicitation may be canceled. The procurement may be re-solicited if the City so desires.

#### H. PRICE INCREASES/DECREASES

The Purchasing Division normally requests bids of firm prices for the contract term. Term contracts, however, may in some cases contain a clause describing conditions under which a price increase will be allowed. After award, a request to increase prices pursuant to the contract must be in writing and addressed to the responsible purchasing agent. It must contain all of the information and documentation called for in the contract. The

Purchasing Manager will respond to any such request within thirty (30) days. Price increases will not be granted unless the solicitation document or contract makes provision for them. In most cases, the City requires that any announced price decreases in a commodity also be passed along to the City.

#### I. CONTRACT EXTENSION

The Purchasing Manager for the City may in his/her discretion extend a contract for such period as may be necessary to afford the City a continuous supply of the items listed in a term contract. Extensions are authorized in the event that a contract shall terminate or be likely to terminate prior to the making of an award for a new contract.

#### J. ADVISORY SERVICES

The City of Johns Creek recognizes the value of advisory or consultative services which vendors often provide to departments. Services of this type will nonetheless be regarded as normal sales effort, and no preferential treatment will be given to vendors providing such services when contracts are awarded. Moreover, no compensation may be paid for any such services unless they were provided pursuant to an existing contract. Equipment provided and installed by a vendor for the purpose of demonstration will not be given preferential recognition in contract awards, and the City will not be liable for any charges or costs incurred by vendors in making such equipment available, nor shall the City be under any obligation to purchase or pay in any manner when a vendor, upon the request of a department, delivers the equipment or other products for test or trial.

## VI. PROTEST PROCEDURE

This section describes the mandatory administrative procedure whereby vendors may challenge the solicitation process and contract awards.

### A. Definitions

1. Protestor means (a) any actual bidder/offeror who is aggrieved in connection with a contract award and who files a protest in writing in accordance with this section.
2. Unless otherwise stated, "day(s)" means calendar day(s).

### B. Submission of Protest

1. Subject of Protest and Time for Filing a Protest - If a vendor or bidder/offeror is aggrieved by any aspect of a solicitation, the vendor or bidder/offeror can choose to protest in accordance with this section.
2. Bidders/offerors may protest the contract award in connection with the bid/RFP on which the bidder/offeror has submitted a bid/proposal. Any such protest by a bidder/offeror must be filed no later than ten (10) calendar days following the date of the notice of award for a service contract or purchase order for a commodity. Vendors who do not submit a protest in the ten (10) calendar day time period waive their right to protest the contract award.
3. Protests pertaining to events or facts arising during the solicitation process, including but not limited to specifications, must be filed no later than two (2) business days prior to the bid opening or proposal due date.

C. Filing a Protest - A written statement of protest signed by a company officer authorized to sign contracts on behalf of the vendor must be received by the City Manager no later than ten (10) calendar days following contract award or issuance of purchase order. Failure to file a protest by the time required may be deemed a waiver of any grounds the vendor or bidder/offeror has to protest. All inquiries received after the ten (10) day period will be fully investigated. However, the inquiry will not be considered a formal protest.

D. The written Protest shall include as a minimum the following:

1. The name and address of the Protestor;
2. Appropriate identification of the solicitation, and, if a contract has been awarded, its number;
3. A statement of reasons for the Protest; and
4. Supporting exhibits, evidence, or documents to substantiate any claims unless evidence is not available within the filing time; in which case the expected availability date shall be indicated.

E. Stay of Procurement During Protest

1. When a Protest pertaining to events or facts arising during the solicitation process, (example: protests concerning specifications and evaluation criteria), has been filed within the requested two (2) business days prior to the bid opening or proposal deadline date, the City Purchasing Division shall suspend the award of a contract until a final decision has been issued, unless the Purchasing Manager makes a written determination, after consulting with the issuing department and City

Manager, that the award of a contract without delay is necessary to protect the best interests of the City.

2. When a Protest has been filed in a timely fashion within ten (10) calendar days following the issuance of a contract award, the Purchasing Division shall consult with the department to determine if performance of the contract without delay is necessary to protect the best interests of the City. If it is determined that it is necessary to proceed with a contract without delay, the bidder/offeror that receives the contingent contract may proceed with performance and receive payment for work performed in strict accordance with the terms of the contract; however, such bidder/offeror shall not be entitled to reimbursement for any capital outlay costs, or other up front expenditures incurred in performing the contract.

#### F. Decision by City Manager

1. Time for Decisions - A recommendation will be made by the Purchasing Manager within three (3) days to the City Manager after receiving all relevant requested information in regard to the Protest filed. The City Manager will provide a decision no later than thirty (30) days after all necessary paperwork is filed.
2. If a Protest is sustained, available remedies may include one of the following:
  - For a protest sustained prior to an award, modification of the solicitation document, including but not limited to specifications, terms and conditions and evaluation criteria; and extension of the opening date if appropriate.
  - For a protest sustained after an award is made, suspension or cancellation of the award, reevaluation and re-award or re-solicitation with appropriate changes to the new solicitation document.
  - If work was started due to the nature of the project and determined to be necessary, then the new successful vendor that won the protest would begin the work where the previous vendor had concluded. (See Section-E)

#### G. Request for Formal Review

Subject of Request for Formal Review and Time for Filing If a protestor disagrees with the decision submitted by the City Manager then the party bringing the complaint may request a formal review with the City Manager within three (3) working days. If requested by either party, the City Manager or his designate shall have a hearing on the complaint and decide the merits of the claim. The City Manager is empowered to decide that the contract at issue be voided, upheld, or whatever other relief may be necessary. The Council shall approve or reject the City Manager's decision. If the party bringing the complaint disagrees with the conclusions of the City Manager and Council, the decision may be appealed to the Superior Court of Fulton County.

## VII. CONTRACT PERFORMANCE

### A. RECEIPT OF PURCHASE ORDER

The successful bidders/offerors will receive a purchase order from the Purchasing Division. The purchase order, which will include the terms, conditions and specifications, states what the contractor must comply with in fulfilling its obligations to the City.

The receipt of a purchase order for a one-time open market purchase authorizes shipment in accordance with its terms. The purchase order number must be shown on all bills of lading, packing slips, back orders, invoices, and other transactional documents.

### B. PAYMENT WITHHELD

Payment for any item delivered pursuant to a contract or order may be withheld until all requirements of the contract or order have been complied with in full.

### C. PENALTIES FOR NON-PERFORMANCE

In the event a Department determines that the contractor's performance has not been in accordance with its contract, the Department shall document the lack of performance and/or cause and forward to the Purchasing Division. The contractor should promptly respond to the complaint, enclosing whatever explanation may be necessary. Failure to satisfactorily respond will be considered in determining the contractor's eligibility for future contracts. The seriousness of the complaint is determined by the Purchasing Manager and recorded in the vendor's file. Repeated complaints could result in suspension. The length of time a vendor remains on suspension is dependent upon the severity of the performance problem, not to exceed three (3) years.

The following are persons or companies who may be placed on suspension:

1. Any person who submits a bid or proposal in bad faith;
2. Any person who willfully or repeatedly breaches a contract with the City.
3. Any person who repeatedly refuses to accept a bid or proposal award;
4. Any person who has established a pattern or practice of unethical or immoral business practices;
5. Any person who has been convicted of a crime involving moral turpitude; and;
6. Any person who is owned, controlled or managed in whole or in part, by any other person described in (1) through (5) above.

Vendor who does not deliver as promised, or delivers unacceptable merchandise may be penalized one percent (1%) of the price of the item(s) per day for a period of up to fourteen (14) days for each day that delivery or replacement is late. If a vendor fails to comply, comparable replacement merchandise may be purchased in the open market. The vendor shall reimburse the City within a reasonable time specified by the Purchasing Manager for any expense incurred in excess of original contract prices or the City shall reserve the right to deduct such amount from monies owed the defaulting vendor/contractor.

#### D. LOSS OR DAMAGE IN TRANSIT

For all purchase orders or contracts designated F.O.B. Destination, delivery of goods to a common carrier does not constitute delivery to the City, and the risk of loss will remain with the contractor until actual delivery is received. Any claim for loss or damage incurred during the delivery shall be made by the contractor directly to the carrier. The user department will note all damage incurred in transit on the freight bill and notify the contractor and the contractor shall make immediate replacement of the damaged merchandise.

#### E. INSPECTION

Delivery does not constitute acceptance. All supplies, materials, and equipment delivered to the City shall be subject to inspection and testing. Items that do not meet specifications will be rejected. Failure to reject upon receipt, however, does not relieve the contractor of its liability. If tests subsequent to delivery reveal a failure to meet specifications, the contractor shall be deemed to have breached its contract.

#### F. CONTRACT RENEWAL

Some contracts contain renewal clauses describing the conditions under which a contract resulting from a solicitation document may be renewed. The decision to renew any contract must be approved by both the user department and the Purchasing Division. In order to renew any contract, the user department must certify in writing to the Purchasing Division that the contractor has performed satisfactorily and met all of the requirements set forth in the contract. After receiving this certification from the user department, the Purchasing Division may then approve the renewal of the contract.

#### G. ASSIGNMENT AND DELEGATION

No contract or any performance required by it may be assigned or delegated, in whole or in part, without the express prior written consent of the City.

## VIII. ETHICS AND UNLAWFUL ACTIONS

### A. ETHICS IN GENERAL

The City of Johns Creek subscribes to the NIGP Code of Ethics for Governmental Service. Among the provisions relevant to the relationship between Department personnel and vendors all persons in government shall:

1. Uphold the Constitution, laws and regulations of the United States and the State of Georgia and of all governments therein and should never be a party to their evasion.
2. Never discriminate unfairly by dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for themselves or their families favors or benefits under circumstances which might be construed by responsible persons as influencing the performance of their governmental duties.
3. Make no private promises of any kind binding upon the duties of office, since a government employee has no private work which can be binding on public duty.
4. Engage in no business with the government either directly or indirectly which is inconsistent with the conscientious performance of their governmental duties.
5. Never use any information divulged to them confidentially in the performance of governmental duties as a means for making private profit.
6. Expose corruption whenever discovered.

The general thrust of the code is to protect governmental integrity. Employees of the City of Johns Creek must discharge their duties impartially and in such a manner as to assure fair and competitive access to governmental procurement by responsible vendors. Moreover, these employees must conduct themselves in such a manner as to foster public confidence in the integrity of the City and the public procurement process.

### B. GRATUITIES

City employees shall not accept gifts or gratuities from organizations, business concerns, or individuals with which they have official relationships concerning the business of City government. Additionally, a City official or employee shall not accept any gift, favor or thing of value that may tend to influence them in the discharge of their duties, or grant in the discharge of their duties any improper favor, service, or thing of value. This policy does not apply to the acceptance of articles of negligible value which are generally distributed to the public, nor to the acceptance of social courtesies which promote good public relations.

Employees may not conduct or promote private business for gain during on-duty work hours and at no time on City premises. Employees with outside business interests should make arrangements to receive and send messages for such business interests during non-work hours. Employees shall utilize the City's electronic communications system only in accordance with the City's stated policies.

Employees who may be in a position to influence actions and decisions regarding City administration shall refrain from relationships which may adversely affect the exercise of

their independent judgment dealing with business, organizations and individuals conducting business with the City.

Thank you for your interest in doing business with the City of Johns Creek. If you have any questions about the contents of this manual, please contact the Purchasing Division at 678-512-3233.

## APPENDIX-A

### QUICK TIPS ON DOING BUSINESS WITH THE CITY OF JOHNS CREEK

1. Be sure that your company is on the City of Johns Creek's Vendor's List. It is important to notify the Purchasing Division of any changes such as your mailing address, phone number, and commodity information. Vendor Applications are available in the Purchasing Division or on the City's website at [www.johnscreekga.gov](http://www.johnscreekga.gov)
2. Regularly review bid and proposal advertisements in the Johns Creek legal organ newspaper (Johns Creek Herald) and notifications on the City website and the State of Georgia/DOAS Procurement Registry.
3. Read and review bid and proposal documents thoroughly. Failure to follow the instructions and conditions contained in the bid or proposal documents could severely penalize your bid, or even result in the rejection of your bid.
4. Allow yourself enough time to submit your bid/proposal before the specified deadline. Bids or proposals submitted after the appointed deadline will not be accepted.
5. Familiarize yourself with the bidding and proposal requirements of the City of Johns Creek.
6. Establish and maintain a good reputation for providing goods and services to the City of Johns Creek in a reliable manner.

\*The information contained in this manual is provided for general informational purposes only. Nothing contained herein shall be construed to modify, amend, override, or nullify any statute, policy or procedure of the City of Johns Creek Purchasing Division, or the provision of any document used in any competitive procurement.

Directions to the City of Johns Creek website:

1. Go to [www.johnscreekga.gov](http://www.johnscreekga.gov)
2. Click on Business Services tab.
3. Click on Procurement Opportunities.